

Union Calendar No. 68

111TH CONGRESS
1ST SESSION**H. R. 1320****[Report No. 111–135]**

To amend the Federal Advisory Committee Act to increase the transparency and accountability of Federal advisory committees, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 5, 2009

Mr. CLAY (for himself and Mr. TOWNS) introduced the following bill; which was referred to the Committee on Oversight and Government Reform

JUNE 4, 2009

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

A BILL

To amend the Federal Advisory Committee Act to increase the transparency and accountability of Federal advisory committees, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Federal Advisory Committee Act Amendments of 2009”.

1 (b) TABLE OF CONTENTS.—The table of contents for
 2 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Ensuring independent advice and expertise.
- Sec. 3. Preventing efforts to circumvent the Federal Advisory Committee Act and public disclosure.
- Sec. 4. Increasing transparency of advisory committees.
- Sec. 5. Comptroller General review and reports.
- Sec. 6. Definitions.
- Sec. 7. Effective date.

3 **SEC. 2. ENSURING INDEPENDENT ADVICE AND EXPERTISE.**

4 (a) BAR ON POLITICAL LITMUS TESTS.—Section 9
 5 of the Federal Advisory Committee Act (5 U.S.C. App.)
 6 is amended—

7 (1) in the section heading by inserting “MEM-
 8 BERSHIP;” after “ADVISORY COMMITTEES;”;

9 (2) by redesignating subsections (b) and (c) as
 10 subsections (d) and (e), respectively; and

11 (3) by inserting after subsection (a) the fol-
 12 lowing:

13 “(b) APPOINTMENTS MADE WITHOUT REGARD TO
 14 POLITICAL AFFILIATION OR ACTIVITY.—All appointments
 15 to advisory committees shall be made without regard to
 16 political affiliation or political activity, unless required by
 17 Federal statute.”.

18 (b) CONFLICTS OF INTEREST DISCLOSURE.—Section
 19 9 of the Federal Advisory Committee Act (5 U.S.C. App.)
 20 is further amended by inserting after subsection (b) (as
 21 added by subsection (a)) the following:

1 “(c) CONFLICTS OF INTEREST DISCLOSURE.—

2 “(1)(A) The head of each agency shall ensure
3 that no individual appointed to serve on an advisory
4 committee that reports to the agency has a conflict
5 of interest that is relevant to the functions to be per-
6 formed by the advisory committee, unless the head
7 of the agency determines that the need for the indi-
8 vidual’s services outweighs the potential impacts of
9 the conflict of interest.

10 “(B) If the head of the agency makes such a
11 determination with respect to an individual, nothing
12 in this subsection is intended to preclude the head
13 of the agency from requiring the recusal of the indi-
14 vidual from particular aspects of the committee’s
15 work.

16 “(C) In the case of an individual appointed as
17 a representative, the fact that an individual is asso-
18 ciated with the entity whose views are being rep-
19 resented by the individual shall not itself be consid-
20 ered a conflict of interest by the agency.

21 “(2) The head of each agency shall require—

22 “(A) that each individual the agency ap-
23 points or intends to appoint to serve on an ad-
24 visory committee as a representative inform the
25 agency official responsible for appointing the in-

1 dividual in writing of any actual or potential
2 conflict of interest—

3 “(i) that exists before appointment or
4 that arises while the individual is serving
5 on the Committee; and

6 “(ii) that is relevant to the functions
7 to be performed; and

8 “(B) that, for an individual appointed to
9 serve on an advisory committee, the conflict is
10 publicly disclosed as described in section 11.

11 “(3) Nothing in this subsection is intended to
12 alter any requirement or obligation for a special
13 Government employee under the Ethics in Govern-
14 ment Act (5 U.S.C. App.) or other applicable ethics
15 law, including any requirement to file a financial dis-
16 closure report. The head of each agency shall require
17 that each individual the agency appoints as a special
18 Government employee inform the agency in writing
19 of any conflict that exists before appointment or
20 that arises while the individual is serving on the
21 committee to the extent any financial disclosure re-
22 quired by the Ethics in Government Act (5 U.S.C.
23 App.) or other applicable law would not uncover the
24 conflict of interest as such term is defined in regula-

1 tions promulgated by the Office of Government Eth-
2 ics to carry out this subsection.

3 “(4) The head of each agency shall ensure that
4 each report of an advisory committee that reports to
5 the agency is the result of the advisory committee’s
6 judgment, independent from the agency. Each advi-
7 sory committee shall include in each report of the
8 committee a statement describing the process used
9 by the advisory committee in formulating the rec-
10 ommendations or conclusions contained in the re-
11 port.”.

12 (c) REGULATIONS.—

13 (1) REGULATIONS RELATING TO CONFLICTS OF
14 INTEREST.—Not later than 180 days after the date
15 of the enactment of this Act, the Director of the Of-
16 fice of Government Ethics, in consultation with the
17 Administrator of General Services, shall promul-
18 gate—

19 (A) regulations defining the term “conflict
20 of interest”;

21 (B) regulations identifying the method by
22 which individuals must disclose conflicts and
23 the period of time for which a representative or
24 special Government employee, or a candidate
25 for appointment as a representative or special

Government employee, shall look back in time to determine whether an interest is considered a conflict for the purpose of the notification requirement in subsection (c) of section 9 of the Federal Advisory Committee Act, as added by this section; and

(C) such other regulations as the Director finds necessary to carry out and ensure the enforcement of such subsection (c).

(2) REGULATIONS IMPLEMENTING FACA.—Section 7(c) of the Federal Advisory Committee Act (5 U.S.C. App.) is amended by inserting after “(c)” the following: “The Administrator shall promulgate regulations as necessary to implement this Act.”.

SEC. 3. PREVENTING EFFORTS TO CIRCUMVENT THE FEDERAL ADVISORY COMMITTEE ACT AND PUBLIC DISCLOSURE.

(a) DE FACTO MEMBERS.—Section 4 of the Federal Advisory Committee Act (5 U.S.C. App.) is amended by adding at the end the following:

“(d) TREATMENT OF INDIVIDUAL AS MEMBER.—An individual who is not a full-time or permanent part-time officer or employee of the Federal Government shall be regarded as a member of a committee if the individual regularly attends and participates in committee meetings

1 as if the individual were a member, even if the individual
2 does not have the right to vote or veto the advice or rec-
3 ommendations of the advisory committee.”.

4 (b) SUBCOMMITTEES.—Section 4 of the Federal Ad-
5 visory Committee Act (5 U.S.C. App.) is amended by
6 striking subsection (a) and inserting the following:

7 “(a) APPLICATION.—The provisions of this Act or of
8 any rule, order, or regulation promulgated under this Act
9 shall apply to each advisory committee, including any sub-
10 committee or subgroup thereof, except to the extent that
11 any Act of Congress establishing any such advisory com-
12 mittee specifically provides otherwise. Any subcommittee
13 or subgroup that reports to a parent committee estab-
14 lished under section 9(a) is not required to comply with
15 section 9(e). In this subsection, the term ‘subgroup’ in-
16 cludes any working group, task force, or other entity
17 formed for the purpose of assisting the committee or any
18 subcommittee of the committee in its work.”.

19 (c) COMMITTEES CREATED UNDER CONTRACT.—
20 Section 3(2) of the Federal Advisory Committee Act (5
21 U.S.C. App.) is amended in the matter following subpara-
22 graph (C) by adding at the end the following: “An advi-
23 sory committee is considered to be established by an agen-
24 cy, agencies, or the President, if it is formed, created, or
25 organized under contract, other transactional authority,

1 cooperative agreement, grant, or otherwise at the request
 2 or direction of, an agency, agencies, or the President.”.

3 (d) ADVISORY COMMITTEES CONTAINING SPECIAL
 4 GOVERNMENT EMPLOYEES.—Section 4 of the Federal Ad-
 5 visory Committee Act (5 U.S.C. App.) is further amended
 6 by adding at the end the following new subsection:

7 “(e) SPECIAL GOVERNMENT EMPLOYEES.—Com-
 8 mittee members appointed as special government employ-
 9 ees shall not be considered full-time or part-time officers
 10 or employees of the Federal Government for purposes of
 11 determining the applicability of this Act under section
 12 3(2).”.

13 **SEC. 4. INCREASING TRANSPARENCY OF ADVISORY COM-**
 14 **MITTEES.**

15 (a) INFORMATION REQUIREMENT.—Section 11 of the
 16 Federal Advisory Committee Act (5 U.S.C. App.) is
 17 amended—

18 (1) by striking the section designation and
 19 heading and inserting the following:

20 **“SEC. 11. DISCLOSURE OF INFORMATION.”;**

21 (2) by redesignating subsection (a) as sub-
 22 section (d) and in that subsection—

23 (A) by inserting the following subsection
 24 heading: “AVAILABILITY OF PAPER COPIES OF
 25 TRANSCRIPTS.—”; and

1 (B) by inserting after “duplication,” the
2 following: “paper”;

3 (3) by striking “(b)” and inserting “(e) AGEN-
4 CY PROCEEDING DEFINED.—”; and

5 (4) by inserting before subsection (d), as redes-
6 ignated by paragraph (2), the following new sub-
7 sections:

8 “(a) IN GENERAL.—With respect to each advisory
9 committee, the head of the agency to which the advisory
10 committee reports shall make publicly available in accord-
11 ance with subsection (b) the following information:

12 “(1) The charter of the advisory committee.

13 “(2) A description of the process used to estab-
14 lish and appoint the members of the advisory com-
15 mittee, including the following:

16 “(A) The process for identifying prospec-
17 tive members.

18 “(B) The process of selecting members for
19 balance of viewpoints or expertise.

20 “(C) A justification of the need for rep-
21 resentative members, if any.

22 “(3) A list of all current members, including,
23 for each member, the following:

24 “(A) The name of any person or entity
25 that nominated the member.

1 “(B) The reason the member was ap-
2 pointed to the committee.

3 “(C) Whether the member is designated as
4 a special government employee or a representa-
5 tive.

6 “(D) In the case of a representative, the
7 individuals or entity whose viewpoint the mem-
8 ber represents.

9 “(E) Any conflict of interest relevant to
10 the functions to be performed by the committee.

11 “(4) A list of all members designated as special
12 government employees for whom written certifi-
13 cations were made under section 208(b) of title 18,
14 United States Code, a summary description of the
15 conflict necessitating the certification, and the rea-
16 son for granting the certification.

17 “(5) A summary of the process used by the ad-
18 visory committee for making decisions.

19 “(6) Transcripts or audio or video recordings of
20 all meetings of the committee.

21 “(7) Any written determination by the Presi-
22 dent or the head of the agency to which the advisory
23 committee reports, pursuant to section 10(d), to
24 close a meeting or any portion of a meeting and the
25 reasons for such determination.

1 “(8) Notices of future meetings of the com-
2 mittee.

3 “(9) Any additional information considered rel-
4 evant by the head of the agency to which the advi-
5 sory committee reports.

6 “(b) MANNER OF DISCLOSURE.—

7 “(1) Except as provided in paragraph (2), the
8 head of an agency shall make the information re-
9 quired to be disclosed under this section available
10 electronically on the official public internet site of
11 the agency at least 15 calendar days before each
12 meeting of an advisory committee. If the head of the
13 agency determines that such timing is not prac-
14 ticable for any required information, he shall make
15 the information available as soon as practicable but
16 no later than 48 hours before the next meeting of
17 the committee. An agency may withhold from disclo-
18 sure any information that would be exempt from dis-
19 closure under section 552 of title 5, United States
20 Code.

21 “(2) The head of an agency shall make avail-
22 able electronically, on the official public internet site
23 of the agency, a transcript or audio or video record-
24 ing of each advisory committee meeting not later
25 than 30 calendar days after the meeting.

1 “(c) PROVISION OF INFORMATION BY ADMINIS-
2 TRATOR OF GENERAL SERVICES.—The Administrator of
3 General Services shall provide, on the official public inter-
4 net site of the General Services Administration, electronic
5 access to the information made available by each agency
6 under this section.”.

7 (b) CHARTER FILING.—Section 9(e) of the Federal
8 Advisory Committee Act (5 U.S.C. App.), as redesignated
9 by section 2, is amended—

10 (1) by striking “with (1) the Administrator,”
11 and all that follows through “, or” and inserting
12 “(1) with the Administrator and”;

13 (2) by striking “and” at the end of subpara-
14 graph (I);

15 (3) by striking the period and inserting a semi-
16 colon at the end of subparagraph (J); and

17 (4) by adding at the end the following new sub-
18 paragraphs:

19 “(K) the authority under which the committee
20 is established;

21 “(L) the estimated number of members and a
22 description of the expertise needed to carry out the
23 objectives of the committee;

24 “(M) a description of whether the committee
25 will be composed of special government employees,

1 representatives, or members from both categories;
2 and

3 “(N) whether the committee has the authority
4 to create subcommittees and if so, the agency official
5 authorized to exercise such authority.”.

6 **SEC. 5. COMPTROLLER GENERAL REVIEW AND REPORTS.**

7 (a) REVIEW.—The Comptroller General of the United
8 States shall review compliance by agencies with the Fed-
9 eral Advisory Committee Act, as amended by this Act, in-
10 cluding whether agencies are appropriately appointing ad-
11 visory committee members as either special government
12 employees or representatives.

13 (b) REPORT.—The Comptroller General shall submit
14 to the committees described in subsection (c) two reports
15 on the results of the review, as follows:

16 (1) The first report shall be submitted not later
17 than one year after the date of promulgation of reg-
18 ulations under section 2.

19 (2) The second report shall be submitted not
20 later than five years after such date of promulgation
21 of regulations.

22 (c) COMMITTEES.—The committees described in this
23 subsection are the Committee on Oversight and Govern-
24 ment Reform of the House of Representatives and the

1 Committee on Homeland Security and Governmental Af-
2 fairs of the Senate.

3 **SEC. 6. DEFINITIONS.**

4 Section 3 of the Federal Advisory Committee Act (5
5 U.S.C. App.) is amended by adding at the end the fol-
6 lowing new paragraphs:

7 “(5) The term ‘representative’ means an indi-
8 vidual who is not a full-time or part-time employee
9 of the Federal Government and who is appointed to
10 an advisory committee to represent the views of an
11 entity or entities outside the Federal Government.

12 “(6) The term ‘special Government employee’
13 has the same meaning as in section 202(a) of title
14 18, United States Code.”.

15 **SEC. 7. EFFECTIVE DATE.**

16 This Act shall take effect 30 days after the date of
17 the enactment of this Act, except as otherwise provided
18 in section 2(c)(1).

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1ST Session

H. R. 1320

[Report No. 111-135]

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